

REMARKS

1. Introduction. Claims 1-30 are in the case. None of the claims have been amended in this response. For the reasons set forth more fully below, Applicant has traversed each of the rejections advanced by the Examiner and respectfully requests reconsideration thereof.

2. 35 U.S.C. §103 Rejection based on Bergeron and Ness. The Examiner rejected claims 1, 3-5, 8-10, 14, 17, 18, 20, 22, 23, and 27-30 as unpatentable over U.S. Patent No. 4,825,799 to Bergeron in view of U.S. Patent No. 6,371,041 to Ness, stating that

Bergeron et al disclose an apparatus and method for hunting game animals including providing a mobile hunting vessel with a hull 22, a first ballast chamber 30, and a dry chamber 22A. Not disclosed by Bergeron et al is a motor, a second ballast chamber, pumping means and evacuation means. Ness discloses a motor (at 60), a second ballast chamber 64, pumping means and evacuation means (with the chambers in fluid communication via conduits; note Figure 3, for example). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the device of Bergeron et al with a motor for improved propulsion, a second ballast chamber for improved ballasting and stability, and pumping and evacuation means for improved ballast speed.

See Office Action, p. 2. Claims 1, 8, 14, 20, 27, and 29 are independent claims, from which the remaining claims depend.

The Examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The standard for any non-obviousness determination under 35 U.S.C. §103 has been defined by the CAFC in *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 221 USPQ 929 (Fed. Cir. 1984). As the court stated in *Montefiore Hospital*, the focus in any §103 analysis is on

the differences between the claimed subject matter and the prior art. For the reasons set forth below, Applicant respectfully submits that there is insufficient factual evidence to support the Examiner's obviousness rejection.

a. Combining the cited references does not create the present invention.

Applicant respectfully disagrees with the Examiner's contention that the combination of Bergeron and Ness would amount to Applicant's mobile hunting vessel. Bergeron discloses a sink box (20) equipped with an irregularly shaped hull (22) and a thin, flat buoyancy platform (24), which is divided into two halves and interconnected by a lengthwise hinge member. The vast majority of the flat buoyancy platform (24) is filled with a urethane-type material (28) to provide buoyancy to platform (24) and indirectly to hull (22). However, a small section near the front portion of platform (24) is referred to as a "ballast tank" (30), which "can be adjustably filled with water W through threaded bores made on the outer sides of the top wall 30A" At col. 4, lin. 41, the inventor notes that, when the ballast tank (30) is empty, "the sink box is forwardly-upwardly-inclined, when floating. The user fills the ballast-tank to make it level. It is emptied to reduce the weight of the sink box for easier transport."

Although Bergeron refers to part 30 as a "ballast tank," the front section 30 of platform (24) is actually used to adjust the angle of pitch of the platform (24). The patent does not discuss any further functions of ballast tank (30). Thus, it is doubtful that ballast tank (30) truly functions as a ballast chamber.

Ness, on the other hand, is non-analogous art. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)(stating that "[i]n order to rely on a reference as a basis for rejection of an

applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.") Ness discloses a deep sea submersible (submarine) having a unique system for gliding ascent, gliding descent, and hovering for exploratory or research purposes. In fact, the Ness device is more akin to an aircraft than to Applicant's device, which is not intended for undersea study, but primarily for hunting at or near the surface of a body of water. Applicant respectfully submits that a person of ordinary skill in the art would not consult the Ness disclosure in order to arrive at Applicant's invention, nor would he have any incentive to do so.

Regardless of whether Bergeron actually contains a ballast chamber and whether Ness is non-analogous art, the combination of Bergeron and Ness would not amount to the invention developed by Applicant. As evidenced from the Bergeron drawings, the Bergeron device is floated by platform (24). Based on Figure 1, Bergeron appears to be incapable of supporting much weight in addition to that of the hunter and his hunting gear, as platform (24) appears to be only slightly above the water surface when fully loaded. Adding the pumping means and evacuation means of Ness, would require, at a minimum, the addition of buoyancy chambers (28), buoyancy air pistons (34), hydraulic actuating cylinders (36), hydraulic cylinder pistons (38), rods interconnecting pistons (40), hydraulic supply and return lines (44, 46), three position isolating valves (50), and a hydraulic power plant (*see* Figure 3). It is difficult to imagine where this equipment would be located on Bergeron and how Bergeron would remain floating if the Ness equipment was successfully incorporated into Bergeron. At best, the combination of Bergeron and Ness would result in a sink box that

is too heavy to be successfully floated by the thin platform (24) of Bergeron and/or too awkward to function in the intended manner.

The above combination would be even more awkward if a motor and a second ballast chamber was further added to Bergeron. In fact, even without the pumping means and evacuation means, Applicant is uncertain that Bergeron could accommodate a motor and/or a second ballast chamber. If the motor of Ness was added to Bergeron, it would presumably be attached to the rear section of platform (24), which would shift the center of gravity far to the rear of the sink box and would most likely cause flooding of hull (22) and sinking of the vessel. Even if a motor could be successfully added to Bergeron without sinking the vessel, it is unlikely that the near-vertical shape of front wall (44) of the hull (22) would allow effective forward motion. It is entirely possible that the shape of front wall (44) and the tapered peripheral edge (25) of platform (24) would cause the vessel to sink upon forward movement, especially if waves of appreciable size crash over front section 30.

Finally, assuming that the addition of any the above equipment to Bergeron is possible, it is difficult to comprehend how buoyancy chambers (28) would function in connection with the ballast tank (30) of Bergeron, because the buoyancy chambers (28) are exposed to the upper hull section of Ness (*see* Figure 1a), with the outer face of pistons (34) open to the sea (*see* col. 6, lin. 59) and thus can only draw water into the buoyancy chambers (28) while completely submerged. For this and the above reasons, Applicant respectfully disagrees that Bergeron and Ness can be combined to arrive at the present invention.

b. No suggestion in the art to combine references. To argue that it would be obvious to one of ordinary skill in the art that Bergeron could be combined with Ness is

merely a hindsight reconstruction of the claimed invention. Even if Bergeron and Ness did amount to Applicant's claimed invention (which is denied), there is no source that contains a suggestion to combine such elements. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. Under §103, the teachings of references can be combined only if there is some suggestion or incentive to do so. *ACS Hospital Systems, Inc. v. Montefiore Hospital, Id.* For the following reasons, the references, either standing alone or in combination, neither suggest nor provide an incentive to one of ordinary skill in the art the use Bergeron in combination with Ness.

The emphasis of the Bergeron device is simplicity and portability. In column 1, line 41, the inventor states that an object of the invention "is that the sink box be of low manufacturing cost." In column 1, line 29-30, the inventor, in discussing the prior art, mentions that "[a] problem with these sink boxes is their transportation. . . . It is in fact cumbersome to carry such sink boxes, and it is a problem to tie them to an automobile because of their bulk which makes them susceptible to breakage." The inventor further states that "[t]he present sink box 20 is advantageous in that it is easily carriable, since hull 22 is readily removable from the central aperture 62 of platform 24 and the latter is readily foldable about hinge 72 to bring halves 74, 76 against each other. Dismantled sink box 20 can be transported on the roof of any car or in the trunk of any full-size sedan automobile and into a conventional row-boat in order to get on the water to the desired hunting area." Col 4, lin. 6-14.

If the teachings of Ness were combined with the device of Bergeron in the manner discussed above, the result would be a complicated and heavy device that would probably not float and thus would not perform well as a hunting blind. In addition, the portability of the Bergeron device would be compromised, because the buoyancy chambers, hydraulic cylinders, *etc.* of Ness could not be easily transported, placed on the top or in the trunk of a car, or placed in a row boat. The same is true if a motor or second ballast chamber was added to Bergeron. Therefore, not only is there a lack of suggestion to combine Bergeron and Ness, but a person of ordinary skill in the art would be discouraged from incorporating the heavy equipment and submersible components of Ness into the Bergeron device.

Considering the above discussion, the claimed invention would not have been obvious to one of ordinary skill in the art under §103 and is therefore allowable. Therefore, Applicant respectfully requests that the Examiner reconsider his rejection.

3. 35 U.S.C. §103 Rejection based on Bergeron, Ness, and Ernst. Claims 2, 11, 15, and 24 were rejected under 35 U.S.C. §103 as being unpatentable over Bergeron in view of Ness as applied to claims 1, 8, 14, and 20, and further in view of U.S. Patent No. 3,638,257 to Ernst. Claims 2, 11, 15, and 24 are all dependent claims and pertain to a camouflaging means. The Examiner has argued that Ernst discloses a camouflaging means. For the reasons set forth in Section 2 of this Response, the combination of Bergeron and Ness do not amount to Applicant's invention as disclosed in each of the independent claims. Therefore, the combination of Bergeron, Ness, and Ernst do not amount to Applicant's invention as set forth in claims 2, 11, 15, and 24.

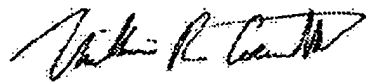
4. 35 U.S.C. §103 Rejection based on Bergeron, Ness, and Baughman. Claim 7 was rejected under 35 U.S.C. §103 as being unpatentable over Bergeron in view of Ness as applied to claim 1, and further in view of U.S. Patent No. 4,828,520 to Baughman. Claim 7 is a dependent claim and pertains to a baffling means. The Examiner has argued that Baughman discloses a baffling means. For the reasons set forth in Section 2 of this Response, the combination of Bergeron and Ness do not amount to Applicant's invention as disclosed in independent claim 1. Therefore, the combination of Bergeron, Ness, and Baughman do not amount to Applicant's invention as set forth in claim 7.

5. 35 U.S.C. §103 Rejection based on Bergeron, Ness, and Rizley. Claims 16 and 21 were rejected under 35 U.S.C. §103 as being unpatentable over Bergeron in view of Ness as applied to claims 14 and 20, and further in view of U.S. Patent No. 4,938,722 to Rizley. Claims 16 and 21 are dependent claims and pertain to a means for allowing the motor to vertically adjust to the level of the water surface. The Examiner has argued that Rizley discloses a vertically adjustable motor. For the reasons set forth in Section 2 of this Response, the combination of Bergeron and Ness do not amount to Applicant's invention as disclosed in independent claims 14 and 20. Therefore, the combination of Bergeron, Ness, and Rizley do not amount to Applicant's invention as set forth in claims 16 and 21.

21. Conclusion. Based on the above amendments and remarks I believe that all of the claims in the case are allowable and an early Notice of Allowability is respectfully

requested. If the Examiner believes that a telephone conference will expedite the disposition of this matter, he is respectfully invited to contact this attorney at the number shown below.

Respectfully submitted,



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